

KENNETH A. FEINSWOG
kfeinswog@aol.com
Bar No. 129562
6701 Center Drive West, Suite 610
Los Angeles, California 90045
Telephone: (310) 846-5800
Fax: (310) 846-5801

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT
OF CALIFORNIA**

-----X
BRAVADO INTERNATIONAL GROUP
MERCHANDISING SERVICES, INC.

Plaintiff,

-against-

**CIVIL ACTION NO.
09-9066 PSG (CWx)**

**RESPONSE TO
ORDER TO
SHOW CAUSE**

JIN O. CHA a/k/a JIN CHA, OK SPORTSWEAR,
EZ SPORTSWEAR, CHANG OH KIM a/k/a
CHANG O. KIM a/k/a CHUCK KIM, EDEN
SPORTS, INC., JUSTIN JU, SY SPORTS,
SUSAN LEE a/k/a SUSAN YOON, LEE'S
FAMILY, INC., GREEN T CORP., KYUNG
SOOK MA, CESAR IGIESIAS, BLING BLING, INC.,
KAUH UN LEE, ARTHUR BERMAN, WACKY
PLANET a/k/a WACKYPLANET.COM, a/k/a
THEPLANETSHOPS.COM, DAVID AHOUBIAN,
a/k/a DAVID AHOUBIN a/k/a DAVID AHOUBIM,
D&T DISTRIBUTION, PARIS FASHIONS,
CLOTHING ISLAND a/k/a CLOTHINGISLAND.COM,
PRINT LIBERATION, JAIME DILLON, NICK
PAPARONE, DR. JAY'S, INC. a/k/a DR. JAYS

Date: June 28, 2010
Time: 1:30 p.m.
Ctrm: 880

1 a/k/a DR. JAYS.COM, MAGGI FASHION
 2 WHOLESALE, INC., MANSOUR ROKHSARZADEH,
 3 AZIZI AFSHIN a/k/a AFSHIN AZIZI, BARGIN
 4 WHOLESALE CORPORATION a/k/a BARGIN
 5 WHOLESALE.COM a/k/a WHOLESALECLOTHING
 6 MARKET.COM a/k/a TBWHOLESALE.COM a/k/a
 7 TOP BRANDS WHOLESALE a/k/a TOP BRANDS,
 8 AHMAD JAMHOUR, OZ COMMUNICATIONS, INC.
 9 a/k/a CRAZYTEES.NET, OTTO SUAREZ, OLGA LYONS,
 10 SHOP RUMOR, LLC, ANOOSHKA ZAKARIAN,
 11 ESTHER LEE, KEUM SPORTSWEAR CORP.,
 12 CHAN SONG LEE, AFRICAN AMERICAN DOLLAR
 13 STORE, EDNA CLEMENT SWAN, JACK LEIBERMAN
 14 a/k/a JACK LIEBERMAN, PROGRESSIVERAGS.COM,
 15 SKREENED, LLC, DANIEL CHRISTOPHER FOX, SHIEKH,
 16 LLC d/b/a SHIEKH SHOES, INCREDIBLEGIFTS.COM,
 17 DANIEL LASSOFF, SHAKY CITY BLUES, MARIO
 18 ONTIVEROS, MAIN COLLECTION, INC. a/k/a MAIN
 19 SPORTSWEAR, SU YOUNG CHO, MB SPORTSWEAR,
 20 CHOUNG H. CHOE, RIGHT THANG, HYU JANG YOON,
 21 BUY MERCHANT, INC. a/k/a BUYMERCHANT.COM,
 22 CRAIG N. BENTHAM, STEAL DEAL, INC. ABRAHAM
 23 DAVOOD, MICHAEL DAVOOD, EBBY DAVOOD,
 24 THE WILD SIDE, INC. a/k/a THEWILDSIDE.COM,
 25 KINGSLEY SYME a/k/a KINGLEY SYMES,
 26 SETUP SITE, INC. a/k/a HARRINGTON OUTLETS
 27 a/k/a OBAMATSHIRTS.US, SOUR CANDY, SHOE
 28 BALANCE INTERNATIONAL YAK SHOE INC.
 a/k/a WHOLESALE SITUATION, JASON AREF, JULIO
 AREF, WATCH TIME, INC., AZIZ R. ALI, UNISHOW
 (USA), INC. a/k/a UNISHOW, INC., GARY CHEN, RENA
 CHEN, AMILINE.COM, JIAN ZHU, GRAVITY TRADING,
 INC., TONY IN CHONG,

Defendants.

-----X

1 Plaintiff hereby submits this Response to the Order to Show Cause issued on
2 May 28, 2010 with respect to whether defendants were improperly joined in this
3 action.

4 Permissive joinder is to be construed liberally in order to promote trial
5 convenience and to expedite the final determination of disputes, thereby preventing
6 multiple lawsuits. Under the rules, the impulse is toward entertaining the broadest
7 possible scope of action consistent with fairness to the parties: Joinder of claims,
8 parties and remedies is strongly encouraged. Rule 20(a) of the Federal Rules of Civil
9 Procedure imposes two specific requisites for the joinder of parties: (1) a right to
10 relief must be asserted by, or against, each plaintiff or defendant related to or arising
11 out of the same transaction or occurrence; and (2) some question of law or fact
12 common to all the parties will arise in the action. *League to Save Lake Tahoe v.*
13 *Tahoe Regional Planning*, 558 F.2d 914, 917 (9th Cir. 1977).
14

15 In the present case, there is a question of law or fact common to all the
16 parties in the action because each of the parties has committed infringement of the
17 Michael Jackson name, trademark and/or likeness and/or the King of Pop mark
18 which is also associated with Michael Jackson.¹

19 The Ninth Circuit has interpreted the phrase “same transaction, occurrence, or
20 series of occurrences” to require a degree of factual commonality underlying the
21 claims. *Coughlin v. Rogers*, 130 F. 3d 1348, 1350 (9th Cir. 1997). Proper joinder
22 under Rule 20 requires that the “parties must assert rights, or have rights asserted
23 against them, that arise from related activities – a transaction or an occurrence or a
24 series thereof.” *Heritage Pacific Financial v. Cole*, 2010 U.S. Dist. LEXIS 52979
25

26 ¹ Plaintiff has also included allegations regarding infringement of copyrights owned by the Michael Jackson estate
27 and in which plaintiff has been granted exclusive reproduction rights. The copyright registrations attached as
28 Exhibit A to the Complaint are visual art and sound recording registrations. With respect to the sound recording
registrations, plaintiff is not claiming infringement of the actual sound recordings but instead plaintiff is alleging

1 (C.D. Cal. May 3, 2010). In the present case, plaintiff asserts rights against the
2 defendants that arise from related activities or a series thereof.

3 Plaintiff has sued several groups of defendants.² The first group of defendants,
4 who are located at 104 East 17th Street, Los Angeles, California (Docket Nos. 33, 34,
5 35 and 56), consists of JIN O. CHA a/k/a JIN CHA, OK SPORTSWEAR, EZ
6 SPORTSWEAR and CHANG OH KIM a/k/a CHANG O. KIM a/k/a CHUCK
7 KIM (the “OK Sportswear Group”).³ Plaintiff has previously pursued other
8 infringement claims against the OK Sportswear Group for the sale of unauthorized
9 merchandise pertaining to other musical performers that plaintiff represents. When
10 plaintiff was investigating the OK Sportswear Group in the prior case, plaintiff
11 learned that the OK Sportswear Group was the source of infringing merchandise to
12 numerous parties in the downtown Los Angeles wholesale district. (Paragraph 10
13 of the Declaration of Kenneth A. Feinswog submitted herewith (“Feinswog
14 Declaration”)). In fact, when purchases were made by plaintiff’s investigator
15 before the commencement of this action, plaintiff discovered that the same shirt
16 with the same design and even with the same neck label in it, was being sold by the
17 group of defendants that consists of DAVID AHOUBIAN, a/k/a DAVID
18 AHOUBIN a/k/a DAVID AHOUBIM, D&T DISTRIBUTION, PARIS
19 FASHIONS, CLOTHING ISLAND a/k/a CLOTHINGISLAND.COM (the
20 “Clothing Island Group”). Copies of said shirts are annexed as Exhibits A and B
21 to the Feinswog Declaration.
22
23

24 copying of the artwork and photographs included in the packaging and/or booklets that are sold with those sound
25 recordings.

26 ² Several parties have been dismissed because plaintiff was not able to serve said parties or plaintiff has entered into
27 settlement agreements with said parties. In this response, plaintiff is only addressing the parties that are currently in
28 this action.

³ Defendants have been grouped together herein because each group includes corporate affiliates and/or individuals
who are employed by and/or own the corporate or unincorporated entities included in a particular group.

1 The Clothing Island Group claims that they purchased their infringing items
2 from defendants MAGGI FASHION WHOLESALE, INC. and MANSOUR
3 ROKHSARZADEH (the “Maggi Fashion Group”) who is located at 1400 Main
4 Street, Los Angeles, California (Docket No. 23) (Feinswog Dec., ¶ 9) and have
5 even filed a cross-claim in connection therewith (Docket No. 147). Based on said
6 facts, plaintiff has a reasonable belief that the chain of distribution went from the
7 OK Sportswear Group to the Maggi Fashion Group to the Clothing Island Group.

8 Another group of defendants that consists of EDEN SPORTS, INC., SY
9 SPORTS, SUSAN LEE a/k/a SUSAN YOON and LEE’S FAMILY, INC. (the
10 “Eden Sports Group”), who were located at 1308 South Main Street, Los Angeles,
11 California sold shirts that include the same designs as shirts sold by the Clothing
12 Island Group and/or the group of defendants that consists of MAIN
13 COLLECTION, INC. a/k/a MAIN SPORTSWEAR and SU YOUNG CHO (the
14 “Main Collection Group”) that were also located at 1310 South Main Street, Los
15 Angeles, California (Docket No. 38). See Exhibits B to G to the Feinswog
16 Declaration. Based on said facts, plaintiff has a reasonable belief that said parties
17 bought shirts from the same sources or from each other which satisfies the series of
18 transactions test.

19
20 Plaintiff has not been able to purchase shirts from the other defendants
21 located in downtown Los Angeles, Hyo Jang Cho and Right Thang, whose
22 business is located at 1328 South Main Street, Los Angeles, California (Docket
23 No. 31 and 62) and MB Sportswear and Choung H. Choe, whose business is
24 located at 225 Winston Street, Los Angeles, California (Docket No. 29 and 30),
25 that are identical to shirts that were sold by other defendants in this action.
26 However, plaintiff has a reasonable belief that said defendants purchased their
27 merchandise from other defendants and/or from common sources as the other
28

1 defendants because of plaintiff's past experience with the OK Sportswear Group
2 and evidenced adduced herein that parties located in the downtown Los Angeles
3 wholesale district have common sources for their infringing merchandise.

4 Plaintiff's reasonable belief was confirmed in this case regarding the Maggi
5 Fashion Group when Clothing Island Group, after being served in this action,
6 claimed that the Maggi Fashion shirts was the source of its shirts. (Feinswog Dec.,
7 ¶9) and by the shirts presented to the Court with this response.

8 Since joinder is supposed to be liberally construed, then plaintiff should be
9 able to proceed and conduct discovery regarding defendants' sources when there is
10 a history of parties in a particular area obtaining shirts from the same sources. It
11 would be judicially efficient to do so.

12 The remaining groups of defendants in this action are PRINT LIBERATION
13 and JAIME DILLON (the "Print Liberation Group"); BARGIN WHOLESALER
14 CORPORATION a/k/a BARGIN WHOLESALER.COM a/k/a
15 WHOLESALECLOTHING MARKET.COM a/k/a TBWHOLESALER.COM
16 a/k/a TOP BRANDS WHOLESALER a/k/a TOP BRANDS and AHMAD
17 JAMHOUR (the "Bargin Group"); DR. JAY'S, INC. a/k/a DR. JAYS a/k/a DR.
18 JAYS.COM ("Dr. Jays"); WATCH TIME, INC. and AZIZ R. ALI (the "Watch
19 Time Group") SHOE BALANCE INTERNATIONAL YAK SHOE INC. a/k/a
20 WHOLESALE SITUATION and JULIO AREF (the "Wholesale Situation
21 Group"); KINGSLEY SYME a/k/a KINGLEY SYMES, SETUP SITE, INC. a/k/a
22 HARRINGTON OUTLETS a/k/a OBAMATSHIRTS.US (the "Setup Site Group")
23 and JACK LEIBERMAN a/k/a JACK LIEBERMAN and PROGRESSIVERAGS.
24 COM (the "Progressive Rags Group"); GRAVITY TRADING, INC. and TONY
25 IN CHONG (the "Gravity Trading Group").
26
27
28

1 Plaintiff has entered into settlement agreements with the Bargin, Gravity
2 Trading and Progressive Rags Groups and expects to dismiss said parties from this
3 action without prejudice within the next 45 days if certain conditions under the
4 settlement agreements with said parties are satisfied. Plaintiff has had a reasonable
5 belief that Gravity Trading purchased its shirts from the OK Sportswear Group
6 based on statements made to plaintiff's counsel. (Feinswog Dec., ¶12).

7 Plaintiff, at the commencement of this action, had a reasonable belief that all
8 defendants, parties selling infringing Michael Jackson shirts, might have bought
9 and/or sold from each other and/or bought shirts from the same sources. The
10 parties in this case who are not located in Los Angeles were all selling
11 merchandise on the Internet and any of the other defendants might have purchased
12 Michael Jackson shirts from said defendants. (Feinswog Dec., ¶13).

13 Although plaintiff may not have been able to establish, prior to the commencement
14 of this action, that all of said parties sold and/or purchased shirts from other
15 defendants and/or obtained shirts from the same sources, plaintiff had a reasonable
16 belief that a series of transactions existed between said parties.

17 This case is unlike *Bridgeport Music, Inc. v. 11C Music*, 202 F.R.D. 229
18 (M.D. Tenn. 2001) in which parties independently downloaded and/or sampled
19 different songs. In the present case, each of the parties in this action was selling
20 unauthorized Michael Jackson shirts which could have been purchased from and/or
21 sold to other defendants in this action and/or could have been received from
22 common sources. As plaintiff learned about the connection between the Maggi
23 Sportswear and Clothing Island Groups after this action was commenced, plaintiff
24
25
26
27
28

1 is likely to establish that other parties were linked. In view of the foregoing, it is
2 respectfully requested that the Court take no action to sever or dismiss any parties.⁴

3 If the Court determines that plaintiff has not established that some of the
4 defendants were not involved in a series of related transactions, it is respectfully
5 requested that the Court sever said parties and create separate actions. In
6 fashioning the appropriate remedy for improper joinder, the Court may, in its
7 discretion, sever the misjoined parties as long as no substantial right would be
8 prejudiced by severance. *Coughlin*, 130 F.3d at 1350. Although the Ninth Circuit
9 Court of Appeals has not opined on the issue, several other circuits have
10 interpreted Rule 21 to permit dismissals of parties only if they do not cause
11 "gratuitous harm to the parties," *Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th
12 Cir. 2000), for the "discretion delegated to the trial judge to dismiss under Rule 21
13 is restricted to what is 'just.'" *DirecTV, Inc. v. Leto*, 467 F.3d 842, 845 (3d Cir.
14 2006)...the Third Circuit commented that "[a]lthough a district court has discretion
15 to choose either severance or dismissal in remedying misjoinder, it is permitted
16 under Rule 21 to opt for the latter only if 'just' - that is, if doing so 'will not
17 prejudice any substantial right.'" *DirecTV*, 467 F.3d at 846 (emphasis in original).
18 The court explained that substantial rights would be prejudiced if dismissal of
19 misjoined parties were to result in the loss of otherwise timely claims. *Id.* at 846-
20 47. *Strandlund v. Hawley*, 532 F.3d 741, 745 (8th Cir. Minn. 2008).

22 Although plaintiff does not believe that there is a statute of limitations issue
23 in this case, there is always a possibility that a defendant may raise a statute of
24 limitations defense because plaintiff is not certain of when all of the infringement
25

26 ⁴ The Watch Time Group are also downtown Los Angeles-based defendants located at 1422 Hooper Avenue, Los
27 Angeles, California (Docket No. 36) and even though said parties sell watches, plaintiff had a reasonable that said
28 parties are involved in a series of transactions related to the other parties in this action because parties who sell shirts
also sell other infringing items such as watches. (Feinswog Dec., ¶11).

1 in this action commenced. Severance would avoid the possibility of plaintiff being
2 denied a substantial right with a defendant raising a defense that it would otherwise
3 not have but for having been dismissed from this action.

4 As the Court recognized in *Coalition for a Sustainable Delta. v. United*
5 *States of America*, 2009 U.S. Dist. LEXIS 111743, (E.D. Cal. November 17,
6 2009), it is appropriate to sever a case and not dismiss a party when dismissal
7 would be wasteful to the parties' and judicial resources. In *Coalition*, the parties
8 had been filed and served and judicial resources had been expended in connection
9 therewith. In the present case, all the parties in question have been served and
10 many have had defaults entered against them. There is even a pending default
11 judgment motion against the Wholesale Situation Group. Plaintiff will be seeking
12 entry of default and/or filing default judgment motions against the other parties
13 that have not filed responsive pleadings.

14 Defendant Dr. Jay's has filed an answer and plaintiff's counsel is currently
15 having settlement discussions with an attorney for the Print Liberation Group.

16 With severance, there will judicial economy linking the cases because
17 discovery issues might arise that may be similar and each case involves the same
18 legal issues regarding the infringement of the Michael Jackson name, trademark
19 and/or likeness.

20 In view of the foregoing, it is respectfully requested that the Court find that
21 all parties have been properly joined because plaintiff had a reasonable belief that
22 all parties were linked by a series of transactions, the purchase and sale of Michael
23 Jackson shirts.

24 If the Court determines that certain parties were improperly joined, it is
25 respectfully requested that said parties be severed and the separate cases can be
26 coordinated for case management purposes with a single scheduling conference
27
28

1 because it would produce judicial efficiency and economy and/or avoiding denying
2 plaintiff a substantial right and/or avoid gratuitous harm to a party.
3
4

5 Dated: June 18, 2010
6 Los Angeles, CA

Respectfully submitted,

7 By: /Kenneth A. Feinswog
8 Kenneth A. Feinswog
9 Attorney for Plaintiff
10 6701 Center Drive West, Suite 610
11 Los Angeles, California 90045
12 (310) 846-5800
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28